

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN N. LINES, et al.,

Defendants.

No. 07-CV-11387 (DC)

**PLAINTIFF'S APPLICATION
FOR ORDER DIRECTING
ALTERNATIVE MEANS OF
SERVICE**

Plaintiff Securities and Exchange Commission respectfully applies, pursuant to Federal Rule of Civil Procedure 4(f)(3), to the Court for an Order directing alternative means of service of the summons and complaint upon four defendants in this case: Phillip James Curtis, a Canadian citizen believed to be residing in Vancouver, British Columbia; Wayne E. Wile, a Canadian citizen most recently believed to be a resident of the Cayman Islands; Anthony W. Wile, a Canadian citizen believed to be most recently a resident of Vancouver, British Columbia or possibly Switzerland; and Robert J. Chapman, an U.S. citizen most recently believed to be a resident of Mexico. This Application is submitted ex parte because these defendants have failed to appear in this action or submit to the jurisdiction of this Court, and the SEC has been unsuccessful, despite diligent efforts, to serve papers on them. In support of this application, the Commission submits the following.

The SEC has unsuccessfully attempted to serve Defendants at their previously known addresses over the last few months. Efforts to ascertain Defendants' current addresses from searches of computer records and databases, as well as by contacting their prior counsel, have

not provided any new information. Similarly, attempts to reach these Defendants through mail at their last known addresses or through email have not lead to any responses to date. See accompanying *Williams Declaration in Support of Application for Order Directing Alternative Means of Service*.

Federal Rule of Civil Procedure 4(f)(3) authorizes the Court to direct alternate means of effecting service on an individual in a foreign country provided that such means are not prohibited by international agreement. See Fed. R. Civ. P. 4(f)(3).¹ Accordingly, the Court has the authority to provide for alternative means of process. Rio Properties v. Rio International, 284 F.3d 1007, 1014 (9th Cir. 2002); Ehrenfeld v. Salim a Bin Mahfouz, 2005 WL 696769 (S.D.N.Y. March 23, 2005). An order providing for alternative service is appropriate where a party's diligent efforts to identify the address of a foreign defendant have proven unsuccessful. FMAC Loan Receivables v. Dagra, 228 F.R.D. 531, 534 (E.D.Va. 2005). Moreover, service of process under Rule 4(f)(3) "is neither a 'last resort' nor 'extraordinary relief.'" Rio Properties, 284 F.3d at 1015.

As stated in the accompanying declaration, Defendant Wayne Wile holds a driver's license indicating an address in the Cayman Islands. The Cayman Islands is a signatory to the Hague Convention.² Alternative service by postal channels is consistent with the Convention, unless the host country objects. See Ackermann v. Levine, 788 F.2d 830 (2d Cir.1986). Thus, service of Wayne Wile via mail at his last known address, along with service at his last known e-mail address, is consistent with international agreement and is reasonably likely to apprise him of these proceedings.

¹ Moreover, the 120 day time limit for effecting service does not apply to service in a foreign country. See Fed.R.Civ.P 4(m).

² See http://travel.state.gov/law/info/judicial/judicial_686.html. According to the State Department website, the Cayman Islands is not one of the nations that has objected to service through postal channels under the Convention.

Defendant Anthony Wile has recently used an e-mail address from an account that appears to be in Switzerland to communicate with counsel formerly involved in the investigation of this case. Defendant Robert Chapman lists an address in Mexico, and also operates an active investment related internet website that lists a U.S. post office box as well as an e-mail address as a contact point. Transmission of process through the means of e-mail is reasonably likely to provide both of these Defendants with the required notice of the proceedings. Moreover, service of process by e-mail is appropriate here, given that this method of service is the most likely to actually reach Anthony Wile in Switzerland and Mr. Chapman in Mexico. See Rio Properties, 284 F.3d at 1017 (finding service of process by e-mail proper); Philip Morris v. Veles, 2007 WL 725412 (S.D.N.Y. March 12, 2007) (same); Williams-Sonoma v. Friendfinder, 2007 WL 1140639 (N.D. Cal. April 17, 2007) (noting that while Switzerland has objected to service by postal channels under the Hague Convention, service by e-mail to a defendant in Switzerland was proper).

Further, service of Curtis in British Columbia, Canada, by transmitting the documents to his last known address and to his former counsel is reasonably likely to apprise him of the proceedings. See D'Acquisto v. Triffo, 2006 WL 44057 (E.D.Wis. 2006) (international agreement does not prohibit alternative service to a defendant in British Columbia, Canada); Savage Universal Corp. v. Grazier Const., 2004 WL 1824102 (S.D.N.Y. August 13, 2004) (service by mail to defendant and on defendant's former attorney reasonably calculated to provide notice to defendant).

The SEC requests that the Court authorize the following alternative methods for service of the summons and complaint together with the Order granting this motion: (1) as to Wayne Wile, by international U.S. mail, not requiring defendant's signature, to P.O. Box 10710 APO,

53 NELSON QUAY WB, GRAND CAYMAN, CAYMAN ISLANDS; and by e-mail to: wilewm@yahoo.com and wilewm@aol.com; (2) as to Anthony Wile, by e-mail to: wile@arbp.ch; (3) as to Robert Chapman, by international certified mail, not requiring defendant's signature, to Reyes No. 7 en el Fraccionamiento Vista Del Lago, Lake Chapala, Jalisco 45900, Mexico; and by e-mail to: international_forecaster@yahoo.com; and (4) as to Phillip Curtis, by international certified mail, not requiring defendant's signature, to 3590 Cypress St., Vancouver V6J 3P1, British Columbia, Canada; and to Irving Einhorn, Law Offices of Irving M. Einhorn, 1710 10th Street, Manhattan Beach, CA 90266. A proposed Order is attached as Exhibit A.

For these reasons, the SEC respectfully requests that the Court grant this Application for Order Directing Alternative Means of Service.

Dated: July 3, 2008

Respectfully submitted,

____/s/ David Williams_____
A. David Williams
Assistant Chief Litigation Counsel
100 F Street, N.E.
Washington, D.C. 20549-4631
(202) 551-4548 (Williams)
(202) 772-9233 (facsimile)
Attorneys for Plaintiff,
Securities and Exchange Commission

Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN N. LINES, et al.,

Defendants.

No. 07-CV-11387 (DC)

**[PROPOSED] ORDER
DIRECTING ALTERNATIVE
MEANS OF SERVICE**

Plaintiff Securities and Exchange Commission (the "Commission"), having filed an application with supporting papers requesting that this Court authorize alternative service of process on Defendants Anthony W. Wile, Wayne E. Wile, Robert J. Chapman, and Phillip J. Curtis; and good cause being shown, it is hereby ORDERED as follows:

1. The Commission is directed to serve the Summons and Complaint along with a copy of this Order upon defendants as follows:

- i. as to Wayne Wile, by international U.S. mail, not requiring defendant's signature, to P.O. Box 10710 APO, 53 NELSON QUAY WB, GRAND CAYMAN, CAYMAN ISLANDS; and by e-mail to: wilewm@yahoo.com and wilewm@aol.com;
- ii. as to Anthony Wile, by e-mail to: wile@arbp.ch;
- iii. as to Robert Chapman, by international certified mail, not requiring defendant's signature, to Reyes No. 7 en el Fraccionamiento Vista Del Lago, Lake Chapala, Jalisco 45900, Mexico; and by e-mail to: international_forecaster@yahoo.com; and
- iv. as to Phillip Curtis, by international certified mail, not requiring defendant's signature, to 3590 Cypress St., Vancouver V6J 3P1, British Columbia, Canada; and to Irving

Einhorn, Law Offices of Irving M. Einhorn, 1710 10th Street, Manhattan Beach, CA
90266.

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DATED: _____, 2008

DENISE M. COTE
UNITED STATES DISTRICT JUDGE

Certificate of Service

I HERBY CERTIFY that on July 3, 2008, I transmitted via e-mail, pursuant to agreement between counsel, *Application For Order Directing Alternative Means Of Service* to::

Mr. Reid M. Figel, Esq.
Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
1615 M St, NW, Suite 400
Washington, D.C. 20036
Counsel for LOM (Holdings) Ltd., Lines Overseas Management Ltd., LOM Capital Ltd., LOM Securities (Bermuda) Ltd., LOM Securities (Cayman) Ltd, LOM Securities (Bahamas) Ltd.

Mr. Philip M. Smith, Esq.
Patton Boggs LLP
1185 Avenue of the Americas, 30th Floor
New York, NY 10036
United States of America
Counsel for Defendant Brian Lines

Mr. Steve Crimmins, Esq.
Mayer Brown
1907 K Street, NW
Washington, D.C. 20006
Counsel for Defendant Scott Lines

s/ David Williams
David Williams